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Attorneys for Defendant APPLE INC.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-  
defendant

v.

APPLE INC.,

Defendant,  
Counterclaimant.

Case No. 4:20-cv-05640-YGR

**DEFENDANT APPLE INC.'S  
ADMINISTRATIVE MOTION TO SEAL  
PX-2339**

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Defendant Apple Inc. (“Apple”) moves the Court to seal PX-2339. PX-2339, included on Epic’s exhibit list to the Court, Dkt. 448 at 75, is an agreement between Apple and AMZN Mobile LLC (“Amazon”) dated May 26, 2017. Pursuant to the agreement, Apple must make reasonable efforts to maintain the confidentiality of the agreement. Apple accordingly has advised Amazon that the exhibit may be admitted at trial, and is filing this provisional motion to seal so that Amazon may submit a declaration in support of sealing within four days pursuant to Local Rule 79-5(e).

When a party seeks to seal records for use at trial, there is a “strong presumption in favor of access” that can be overcome only by “compelling reasons.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quotation marks omitted). The party seeking to seal the document or proceedings must “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–79 (alteration, citation, and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

This motion is filed pursuant to Local Rule 79-5(e), as the document contains the confidential information of Amazon. Apple is filing this provisional motion to seal to permit Amazon the opportunity to file a declaration in support of sealing the document, should it choose to do so.

Dated: April 28, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Rachel S. Brass  
Rachel S. Brass

Attorney for Defendant Apple Inc.